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24 JAN 2006

Merck & Co., Inc.  
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In re Application of

ANKER et al.

U.S. Application No. 10/520,962

PCT No.: PCT/US03/21493

Int. Filing Date: 08 July 2003

Priority Date: 11 July 2002

Attorney Docket No.: MS0012YP

For: TREATMENT FOR NEUROPATHIC  
PAIN WITH 6H-PYRROLO[3,4-D]  
PYRIDAZINE COMPOUNDS

DECISION ON REQUEST

This decision is in response to applicants' Petition under 37 CFR 1.497(d) filed 28 November 2005. The petition fee will be charged to Deposit Account no. 13-2755.

### BACKGROUND

On 08 July 2003, applicants filed international application PCT/US03/21493 which claimed a priority date of 11 July 2002. The international application named Naomi Burke Anker; Jeannie M. Arruda; Brian Thomas Campbell; Benito Munoz; Petpiboon Prasit; and Brian A. Stearns as applicants/inventors. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 11 January 2005.

On 10 January 2005, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 24 June 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 28 November 2005, applicants filed a Petition under 37 CFR 1.497(d) and a declaration executed by: Naomi Burke Anker; Jeannie M. Arruda; Brian Thomas Campbell; Benito Munoz; Petpiboon Prasit; Brian A. Stearns and Tao Hu.

### DISCUSSION

In the instant case, the international application named Naomi Burke Anker; Jeannie M. Arruda; Brian Thomas Campbell; Benito Munoz; Petpiboon Prasit; and Brian A. Stearns as applicants/inventors. Applicants request to add Tao Hu as an applicant/inventor. In order to correct an error in naming the inventor(s) made during the international stage in the national stage, a submission under 37 CFR 1.497(d) is required.

A submission under 37 CFR 1.497(d) to correct an error in naming inventorship requires: (1) a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part; (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.497(a); (3) the fee set forth in 37 CFR 1.17; and (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicants have satisfied items (1); (2); and (3).

Regarding item (4) above, applicants have not provided a written consent of the assignee. Additionally, the assignee must establish its ownership to the application in accordance with 37 CFR 3.73. It is noted that the assignment allegedly filed is not located therein. See Manual of Patent Examining Procedure (MPEP) §324 and Statement under 37 CFR 3.73(b) (Form PTO/SB/96).

For the reasons discussed above, it is inappropriate to grant applicants request for correction of inventorship.

### CONCLUSION

For the reasons discussed above, applicants' request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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